IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 501 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAMESHKUMAR MORAJI MARWADI

Versus

STATE OF GUJARAT

Appearance:

MR VIVEK BAROT for Petitioner

MR K P RAVAL, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE A.R.DAVE

Date of decision: 10/04/97

ORAL JUDGEMENT(Per Soni,J.)

The appellant-original accused by this appeal has challenged the order of conviction dated 17th May, 1988 under Section 302 of the Indian Penal Code whereby he is sentenced to rigorous imprisonment for life by the

learned Addl. Sessions Judge, Court no.10, Ahmedabad in Sessions Case no.279/87.

The facts leading to the prosecution of the appellant(hereinafter referred to as the accused) are as under:

The accused is the brother of Shantaben Sugnaji wd/o deceased Sugnaji Bhagirathji. Because of some matrimonial disputes between the deceased and Shantaben, Shantaben had left the matrimonial house and started to reside with her mother and brothers at the second floor, Block no.11, Municipal Slum Quarters, Gomtipur, Ahmedabad. In the early morning of 28th October, 1987 may be at about 0.30 hours the deceased appears to have gone to the second floor of Gomtipur, Municipal Slum Quarters, Ahmedabad where his wife was residing with her mother and brothers. There it appears that at the terrace the deceased was burning and in that very condition he came down the stairs, fell down and rolled to the second floor. He was also injured on the left side above the eye and was bleeding. He was totally burnt. Because of hue and cry members of the locality called for ambulance and deceased was removed to Shardaben Hospital and it appears that he reached there at about 1.30 a.m.. He was then taken to the Emergency Ward from where he was removed to the Burns Ward. Dr. Mayur Mehta in the course of treatment inquired about the history of injury and he was informed by the deceased that when he had gone to his brother-in-law (Rameshbhai's) house he was burnt by him by pouring kerosene when he was going to meet his wife. In view of the history stated by the victim the Police Constable on duty in the hospital was called. Thereafter the Police Constable on duty at the hospital came and also recorded statement. The deceased had stated before him that he is burnt by his brother-in-law-Rameshbhai by pouring kerosene. He is burnt on the terrace of the third floor. The Police Constable accordingly made an entry in the Vardi book and communicated the same to the concerned Police Station. Based on this information offence was registered and investigation was carried out. On completion of the investigation, the accused was charge-sheeted. The accused pleaded not guilty to the charge and was tried. Learned Addl. Sessions Judge, Ahmedabad after hearing the parties, on completion of the prosecution evidence, held the accused guilty of the offence under Section 302, IPC and awarded sentence of rigorous imprisonment for life. Against that judgment and order of 17th May,1988, the present appeal is preferred.

Before the trial Court all the witnesses except Police and Doctor have turned hostile. The prosecution was left with Dying Declarations and medical evidence and the learned Addl. Sessions Judge accepted the said evidence and held the accused guilty of the offences for which he was charged.

Learned Counsel Mr. V.M. Barot has challenged this order of conviction on two grounds (i) that the dying declarations on which the learned Judge has relied cannot be relied upon in as much as the victim has not stated those facts which amount to Dying Declarations and (ii) the victim cannot be said to be in a fit state of mind as can be read from the medical evidence on record. Mr. Barot contended that the victim was conscious is not sufficient to hold that he was in a fit state of mind to make any statement. Mr. Barot further contended that looking to the physical condition of the victim due to 100% burns he could not be said to be in a fit state of mind . Not only that but he was also drunk at the relevant time, and therefore also, he was not in a fit state of mind to make any statement and any statement made under the said circumstances ought not to have been accepted by the learned Judge and this Court also should not accept the same. Mr. Barot further contended that the probability of suicide in the facts and circumstances as on record also cannot be ruled out. Mr. Barot contended that when there are two probabilities - one alleged by the accused and the other alleged by the prosecution and both are probable then one favourable to the accused should have been accepted and the learned Addl. Sessions Judge erred in not accepting the theory of suicide. Mr. Barot therefore contended that the learned Addl. Sessions Judge has committed an error in recording the conviction and ought to have acquitted the accused. In view of this fact, the appeal should be allowed and the appellant-accused should be acquitted.

Mr. K.P. Raval, learned A.P.P. contended that from the evidence on which the accused relies, it becomes clear that the deceased victim was in a fit state of mind and the learned Addl. Sessions Judge has not committed error in accepting the dying declarations. So far as the defence regarding suicide by the victim is concerned the circumstances on record negatives the same and the learned Judge has rightly not accepted the same. He therefore contended that the appeal should be dismissed.

Dated 15-4-1997

This brings us to consider whether deceased committed suicide. According to the learned Counsel for the defence, the theory that the deceased committed suicide is more probable than that he is killed by the accused. Learned Counsel for the defence relied on medical papers to establish that it was a case of suicide rather than homicide.

To show that deceased did commit suicide, learned Advocate Mr. Barot has relied on certain observations in the judgment in the case of SHARAD BIRDHICHAND SARDA V. STATE OF MAHARASHTRA (AIR 1984 SC 1622). To show how those observations of the judgment of the Supreme Court are relelvant, learned Advocate Mr. Barot stated that with a view to take revenge of the insult in not allowing his wife to join him, deceased drenched himself in kerosene and burnt himself at the door of in-laws and committed suicide. There is no dispute to the fact that wife of the deceased-Bai Shanta had left her matrimonial home and started staying with her mother and brothers. In the evening of the fateful day, the deceased had gone to fetch her and Bai Shanta was not sent by her brothers and mother. It is in evidence that the mother told him that he may kindly come the next day without consuming any liquor and take her and that they will surely send her to join him. However, thereafter, after midnight, the deceased had gone to the place of in-laws and the incident took place. It is the case of the defence that as the wife of the accused was not sent with a view to take revenge, the accused went at midnight and has taken such deadly step. Keeping this fact in mind, Mr. Barot has referred to relevant paragraphs of SHARAD'S case (Supra) which are reproduced herebelow:

"40. Thus, from the recitals in the letters we can safely hold that there was a clear possibility and a tendency on her part to commit suicide due to desperation and frustration. She seems to be tired of her married life, but she still hoped against hope that things might improve. At any rate, the fact that she may have committed suicide cannot be safely excluded or eliminated. It may be that her husband may have murdered her but when two views are reasonably possible the benefit must go to the accused. In order to buttress our opinion, we would like to cite some passages of an eminent psychiatrist, Robert J. Kastenbaum where in his book ' Death, Society and Human Experience' he analyses the causes, the circumstances, the moods and emotions which may drive a person to commit suicide.The learned author has written that a person who is psychotic in nature and suffers from depression and frustration is

more prone to commit suicide than any other person. In support of our view, we extract certain passages from his book:

" The fact is that some people who commit suicide can be classified as psychotic or severely disturbed(p.242)

If we are concerned with the probability of suicide in very large populations, then mental and emotional disorder is a relevant variable to consider.(p.243)

And it is only through a gross distortion of the actual circumstances that one could claim all suicides are enacted in a spell of madness.(p.243)

" Seen in these terms, suicide is simply one of the ways in which a relatively weak member of society loses out in the junglelike struggle.(p.243)

The individual does not destroy himself in hope of thereby achieving a noble postmortem reputation or a place among the eternally blessed. Instead he wishes to subtract himself from a life whose quality seems a worse evil than death.(p.245)

The newly awakened spirit of hope and progress soon became shadowed by a sense of disappointment and resignation that, it sometimes seemed, only death could swallow.(p.245)

Revenge fantasies and their association with suicide are well known to people who give ear to those in emotional distress."(p.251)

" People who attempt suicide for reasons other than revenge may also act on the assumption that, in a sense, they will survive the death to benefit by its effect.

... .

The victim of suicide may also be the victim of self-expectations that have not been fulfilled.The sense of disappointment and frustration may have much in common with that experienced by the person who seeks revenge through suicide. ... . However, for some people a critical moment arrives when the discrepancy is experienced as too glaring and painful to be tolerated. If something has to go it may be the person himself, not perhaps the excessively high stands by which the judgment has been made ... ... Warren Breed and his

colleagues found that a sense of failure is prominent among many people who take their own lives."

"93. Another inference that follows from the evidence of the witness discussed is that the constant fact of wailing and weeping is one of the important symptoms of an intention to commit suicide as mentioned by George W. Brown and Tirril Harris in their book " Social Origins of Depression" thus:-

"1. Symptom data
Depressed mood __
1. Crying
2. feeling miserable/looking
miserable, unable to smile or
laugh
3. feelings of hopelessness about
the future.
4. Suicidal thoughts
5. Suicidal attempts
fear/anxiety/worry
15. psychosomatic accompaniments
16. tenseness/anxiety
17. specific worry
18. panic attacks
19. phobias
Thinking
20. feelings of self depreciation/
nihilistic delusions
21. delusions or ideas of reverence
22. delusions of persecution/jealousy
23. delusions of grandeur
24. delusions of control/influence
25. other delusions e.g
hypochondriacal worry
26. auditory hallucinations
27. visual hallucinations."

"96. After a careful consideration and discussion of the evidence we reach the following conclusions on point no.1:

(1) that soon after the marriage the relations between Manju and her husband became extremely strained and went to the extent that at no point of return had been almost reached,

(2) that it has been proved to some extent that the appellant had some sort of intimacy with Ujvala which embittered the relationship between Manju and him,

(3) that the story given out by PW 2 and supported by PW 20 that when they reached Pune after the death of Manju they found appellant's weeping and wailing out of grief as this was merely a pretext for shedding of crocodile tears, cannot be believed,

(4) that the story of suicidal pact and the allegation that appellants illicit relations with Ujvala developed to such an extreme extent that he was so much infatuated with Ujvala as to form the bedrock of the motive of the murder of Manju, has not been clearly proved,

(5) the statement of PW 2 that the appellant had told him that during the night on 11th June, 1982 he hade sexual act with the deceased is too good to be true and is not believable as it is inherently improbable,

(6) that despite the evidence of PWs 2, 3, 6 and 20 it has not been proved to our satisfaction that the matter had assumed such extreme proportions that Manju refused to go to Pune with her father-in-law(Birdhichand) at any cost and yet she was driven by use of compulsion and persuasion to accompany him.

(7) that the combined reading and effect of the letters (Exts. 30, 32 and 33) and the evidence of PWs 2, 3, 4, 6 and 20 clearly reveal that the signs and symptoms resulting from the dirty atmosphere and the hostile surroundings in which Manju was placed is a pointer to the fact that there was a reasonable possibility of her having committed suicide and the prosecution has not been able to exclude or eliminate this possibility beyond reasonable doubt.

We must hasten to add that we do not suggest that this was not a case of murder at all but would only go to the extent of holding that at least the possibility of suicide as alleged by the defence may be there and cannot be said to be illusory.

(8) that a good part of the evidence discussed above, is undoubtedly admissible as held by us but its probative value seems to be precious little in view of the several improbabilities pointed out by us while discussing the evidence."

Relying on the observations in Paragraph 96 in particular sub-paragraphs 5 and 7, Mr. Barot contended that the defence has been able to prove that deceased has

committed suicide. Mr. Barot has emphasized on the previous conduct of the deceased saying that he had a tendency to commit suicide. In absence of any evidence to show as to what was the reason for the deceased to commit suicide earlier, it would be unjustifiable to link the previous act of attempt to commit suicide with the present one to hold it as an act of suicide. In our opinion, the defence theory of suicide cannot be accepted otherwise also.

The deceased died of burns having poured kerosene on himself as alleged by defence. The place of incident is shown by the prosecution to be at the terrace. In the Panchnama, no kerosene much less , its smell is found from the terrace. No container of kerosene is also found from the terrace. According to the defence deceased was a smoker and as per Panchnama stubs of bidies and some matchsticks are also found from the terrace. Therefore, find of matchstick by itself is not a circumstance whereby it can be said that he ignited himself. A person who commits suicide will not bother to safely place all the articles whereby he commits suicide. In the instant case, when container is not found, it is surprising as to how he poured kerosene, from where he poured kerosene and why he poured and selected the terrace. Admittedly, this is the place which can be said to be in possession of or jointly possessed by the accused. Another surprising circumstance is that shoes are found at the terrace. They are alleged to be of the deceased, yet it also does not contain either any kerosene or smell thereof. No doubt a quilt by which the deceased was covered had a smell of kerosene. In the Panchnama of the room of the accused a tin of kerosene was found which contained about one litre of kerosene but in that room also no kerosene is found from the floor or any other place or any other part of the room. Thus, in our opinion, the circumstance on record suggest that it is not a case of suicide.

It is contended by Mr. Barot that the deceased was drunk and the report of the Forensic Science Laboratory shows that the deceased had died of kerosene burns. It is the allegation that the deceased was drunk, but it is not proved that he was drunk muchless at the relevant time. Mr. Barot relying on the medical papers contended that he was drunk, but on proper reading of the medical papers it is clear that patient was known drunkard as stated by his wife. She has further stated that deceased was taking alcohol daily. This personal history given by the wife does not reveal that deceased was drunk at that time. However, in the cross-examination of the Doctor it was suggested that

Doctor had not conducted test to ascertain whether the patient had consumed alcohol or not. No doubt the learned Judge has not allowed this question but this question itself does not suggest that the patient was in a drunken condition. The Doctor has specifically stated that if they are to state whether the patient was in a drunken condition or not they are required to carryout the test, otherwise, they are not required to do so. In view of these facts, we are of the opinion that the theory of suicide cannot be sustained.

When the deceased had not committed suicide , the only probability which remains is that he died a homicidal death. The deceased after having caught fire and sufficiently burnt was removed to the hospital by his wife Shantaben. The deceased was immediately taken to emergency ward where the Doctor on emergency duty before directing him to be admitted in Burns Ward has recorded short history. " Alleged history of being burns." He also found on examination, burns on both upper limbs, both lower limbs, abdomen, chest and face 100% burns. From the case papers it appears that he was brought in Emergency ward at 1.30 a.m. on 28th October, 1989. He was then removed immediately to Burns Ward where Doctor examined him and before the said Doctor he has given history as under:

"Alleged history of homicidal burns due to kerosene. Alleged history of burns by his brother-in-law Rameshbhai at his brother-in-law's home by pouring kerosene while he was going to meet his wife at about 12.30 p.m. as said by patient."

The Doctor has recorded this history at about 1.55 a.m. Then, after giving preliminary treatment and recording some personal history, the Doctor has informed RMO and police. There is no dispute about the fact that there were 98% to 99% burns with full thickness. The Doctor who has recorded this history is examined at Exh.6. He has stated that the patient was in a position to speak and what was stated by the patient has been also stated by him on oath. He has also stated that no pathedrine injection was given. He has also deposed to the effect that: " My mother tongue is Gujarati. I did not inquire as to what was the mother tongue of the patient as his condition was serious. I asked questions to the patient in Gujarati as well as Hindi and the patient replied the same in Gujarati. The patient found difficulty in replying my questions in Gujarati. I, therefore, also asked questions in Hindi. It is true that patient was speaking in Marwadi language." In

cross-examination this Doctor has denied that the patient was in unconscious condition when he was admitted in the hospital. He has also denied that he has not asked any questions and the patient had no talk with him or that the patient had not replied anything. The Doctor has also denied that the patient had not replied as written by him. On the basis of the information received the Constable on duty at the hospital Prahladsingh Ramsing PW 4 reached the Burns Ward at about 2.00 a.m. to 2.15 a.m. on 28th October, 1987. He therefore inquired from the patient as to how he is burnt and the patient replied" My brother in law Rameshbhai has burnt me by pouring kerosene . I am burnt at the terrace of the third floor." This statement was recorded by this Constable in his Vardhi book and it was despatched to the concerned police stations accordingly. Vardhies recorded in concerned police station are at exhs.18 and 19.

Learned Advocate Mr. Barot contended that in view of the case papers of the hospital patient could not be said to be in conscious state of mind to give Dying Declaration. Mr. Barot further contended that simply stating that a patient is conscious by the Doctor is not sufficient but the Doctor ought to have further said that patient was in a fit state of mind. Further, person who is conscious need not necessarily be in a fit state of mind. In absence of any evidence by the prosecution that not only the patient was conscious but was also in a fit state of mind to depose and state as to what has happened to him, any of the statements recorded in the name of the patient should not be accepted. To substantiate his argument, Mr. Barot drew our attention to the case papers. At page 8 of the case papers(page 56 of the record) at the left hand side column top after the word "CNS" the word "drowsy" is overwritten on some other word which appears to be "semiconscious". Thereafter again the Doctor has written "CNS tachycardia" Mr. Barot has tried to make a mountain out of it by stating that initially word " semiconscious" is written and the word "drowsy" is overwritten on it. What can be the reason for the Doctor to write " drowsy" instead of semiconscious. Mr. Barot contended that this was written with a view to show that history written by him was given by a conscious man and not by a semiconscious man. The word "drowsy" does not necessarily mean semiconscious or unconscious. The ordinary meaning of the word "drowsy" as in the Concise Oxford Dictionary of Current English, Eighth Edition means - half asleep, dozing, soporific, lulling, sluggish. The word " semiconscious" as per Butterworth's Medical Dictionary means - A state of incomplete consciousness. Both these

words suggest that the patient was not unconscious. The word " unconsiousness" is defined in the very dictionary of Butterworth as - The state in which the higher functions of the cerebrum are in abeyance, and there is a lack of appreciation of sensory impulses reaching the cerebrum. This may be physiological, as in sleep, or pathological, as in conditions interfering with the blood supply(temporarily as in fainting, or persistent as with compression.). It may also be due to toxic causes. Severe unconsciousnes, in which the patient cannot be roused is termed coma.

Mr. Barot then took us to the treatment sheet where at 2.00 a.m. the patient is shown drowsy, at 2.15 a.m. the patient is shown semiconscious, at 2.45 a.m. the patient is shown unconscious and he has died at 2.50 a.m. According to Mr.Barot, the patient was semiconscious which was then corrected to drowsy and at the time when he was brought to Doctor at 1.55 a.m. the patient was unconscious. The Doctor PW.1 has specifically stated in the case papers in his own handwriting that the history recorded by him was given by the patient. At page 8 some personal history is given by the patient's wife. He has again after recording the history stated by the wife stated that at the time of admission patient was conscious and he could speak. In view of this medical documentary evidence which was immediately thereafter corroborated by PW 4 Constable on duty in the hospital, the patient was not only conscious but was also in a fit state of mind, otherwise, the patient may not give the name of the brother-in-law. Secondly, he understood the questions put by the Doctor, however, he found difficulty with the language in answering the same. It is a known fact that Marwadi language is just akin to Gujarati language. A question put in Gujarati could be understood by one who knows Marwadi language but may find difficult to answer in Gujarati. Marwadi language is also akin to Hindi language than Gujarati language , and therefore, the Doctor realizing the difficulty of the patient in giving answers also put questions in Hindi and they are replied by the patient in Marwadi. This apart, when the Doctor PW 1 was in the box no question was put to the Doctor about overwriting on that word "semiconscious". No explanation is sought from the Doctor as to why he wrote "drowsy" and again has written "CNS" after writing "RS". CNS means Central Nervous System, RS means Respiratory system. Against the word RS it is written "tachyponea" which means pertaining to breath and against the word CNS it is written" tachycardia" which means pertaining to pulse. If an explanation would have been sought from the

Doctor, it would have been easily explained by him. The word "drowsy" is overwritten, but it appears from the case papers that the Doctor had some difficulty about his pen or he is in the habit of overwriting the things.

Dated: 17-4-1997

Thus, in absence of any explanation sought from the Doctor about this overwriting of word " drowsy" and writing CNS at two places, the same cannot be read adversely to prosecution. According to the Doctor, patient was able to talk, patient was conscious when brought to him and at that time and on inquiry the patient has given history. The time at which the history is given is 1.55 a.m. Thereafter, the patient was again examined at 2.00 a.m. when also he was found drowsy. Then, when he was examined at 2.15 a.m. he was found semiconscious and at 2.45 a.m. he was found unconscious and has died at 2.50 a.m.. Learned Advocate Mr. Barot referring to this state of health of the deceased contended that he cannot be said to be in a fit state of mind at the time when the history is recorded. When the Doctor has said that he was able to talk and was conscious at 1.55 a.m. and was drowsy at 2.00 a.m. , it cannot be said that the patient was not in a fit state of mind. A person who is conscious but not in a fit state of mind if asked any questions may answer, but those answers may not be coherent or consistent. The Doctor on inquiry from the patient has recorded history in the words of the patient. Doctor found him conscious but the reply also suggests that the same is coherent which is suggestive of fit state of mind.

When history is given by the patient to the Doctor, sister of the accused(who also happens to be the wife of the deceased) was present with him. Though the police has recorded her statement, she is not examined as a witness. What earthly reason would the patient have to involve his brother-in-law, if according to the defence, he was not the person who has committed the alleged act, more particularly, when the sister of the accused is present at that time. Mr. Barot contended that when patient went to fetch his wife in the evening at about 9.00 a.m. she was not allowed to go with him and therefore the patient had gone again after midnight. This act of refusal to sent his own wife with him might have been taken by the patient as an insult and with a view to take revenge he might have gone at midnight again and might have immolated himself. This suggestion of Mr. Barot does not appear to be a reasonable one particularly in absence of material used for the purpose of burning,

in particular, kerosene at the terrace. Mr. Barot further contended that if kerosene was sprinkled by the accused then neither kerosene nor anything is found from the terrace or any other place. In the instant case, we are at pains to say that the actual place of incident on terrace is not located. The alleged place of incident as per PW.8-Ganeshbhai is on terrace and is shown by Bai Shanta-the wife of the deceased. Bai Shanta is not an eye witness even according to the prosecution or the defence. However, place of incidence is not disputed by defence. When Bai Shanta is not an eye witness and does not know where the incident took place, she has shown terrace as scene of offence which is not disputed by defence. Unfortunately, the police has not taken care to find out the exact place on terrace. The police had searched the room where the accused resides and found a tin of kerosene, however the Panchnama of that room is not prepared. In our opinion, this does not affect adversely the case of the prosecution. In our view, the allegation of the defence is that the deceased has committed suicide, but as discussed above we have ruled out the theory of suicide. We may add one more circumstance that, as the Doctors generally say, in case of suicide, sole of the victim would normally never get burnt. In the instant case both the soles of the deceased are burnt and it rules out the theory of suicide. We do not find any reason from the record which would suggest that the deceased had any reason worth the name to involve the accused wrongly. When there is nothing on record to show that the history given by the victim to the Doctor is not reliable and truthful, there is no reason not to accept the same and base conviction thereon. The patient has not only told this history to the Doctor but he has also so stated before the Constable on duty in the hospital PW 4 Prahladsing Ramsing. He also states that when he asked the patient as to how he received burns he has replied that: " My brother-in-law Rameshbhai has burnt me by pouring kerosene. I am burnt on the third floor at the terrace. The deceased was on the third floor at the terrace as stated by PW.8 Ganeshbhai whose evidence to that extent atleast can be accepted. From the evidence of Prahladsing Ramsing PW 4, it can be said that the victim was in a fit state of mind. Thus, when there is nothing on record to reject the statement of the victim before Doctor as well as Constable on duty and when the same is reliable and truthful, there is no reason to interfere with the findings and conclusions arrived at and the order passed by the learned Addl Sessions Judge. It is settled law that Dying Declaration alone if found reliable and truthful can be the basis for conviction. Mr. Raval,

learned A.P.P. has contended before us that irrespective of degree of burns and general condition being poor when the Doctors have said that the patient was in a fit state of mind or from the evidence of the Doctor it can be inferred that he was in a fit state of mind, the patient should be considered and accepted to be in a fit state of mind. To substantiate this contention, he has relied on the judgment in the case of PADMABEN SHAMALBHAI PATEL v. STATE OF GUJARAT (1991) 1 Supreme Court Cases 744. The relevant observation at paragraph 10 reads as under:

"10. Mr. Mehta then submitted that having regard to the fact that the victim had 90 percent burns and her general condition was poor, it would be hazardous to hold that her statements to the two medical men were true. He also argued that she had burns on her lips and her tongue was swollen making it doubtful if she could talk. We do not think there is any merit in this submission. In Suresh v. State of M.P. this Court was required to deal with a more or less similar situation. In that case the victim had sustained 100 per cent burns of the second degree and her dying declaration was recorded by Dr. Bhargava in the hospital. Dr. Bhargava had deposed that the victim was in a fit state of health. The evidence, however, disclosed that while Dr. Bhargava was recording her statement the victim had started going into a coma. Yet this Court accepted the dying declaration made by the victim to Dr. Bhargava. Therefore, the mere fact that she had suffered 90 per cent burns and her general condition was poor is no reason to discard the testimony of both the medical men when they say that she was in a fit state of mind and was able to make the dying declaration in question."

In view of the above discussion, we do not find any reason to interfere with the order of conviction recorded by the learned Addl. Sessions Judge. The appeal, is therefore, liable to be dismissed and is hereby dismissed.

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